Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1616

GLENN ANGLIN,
Petitioner,

vs

STATE OF INDIANA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA

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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1979

NO.

GLENN ANGLIN,
Petitioner,

VS.

STATE OF INDIANA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE SUPREME COURT OF INDIANA

The Petitioner, Glenn Anglin, prays that a Writ of Certiorari issue to review the opinion and judgment of the Indiana Court of Appeals rendered in the proceedings on May 17, 1979. A timely petition for rehearing was denied on August 1, 1979 without opinion. A timely petition for transfer to the Supreme Court of Indiana was denied without opinion on January 17, 1980.

OPINIONS BELOW

The opinion of the Indiana Court of Appeals (Appendix A, pp. A-2 to A-7)) was denied without opinion (Appendix B, p. A-8) on August 1, 1979 and unreported. The petition for transfer to

the Supreme Court of Indiana (Appendix C, pp. A-12 to A-15) was denied without opinion (Appendix C, p. A-12) on January 17, 1980 without being reported.

JURISDICTION

The order of judgment of the Indiana Court of Appeals was rendered on May 17, 1979 with a memorandum decision clearly marked "NOT FOR PUBLICATION". A timely petition for rehearing was filed and denied on August 1, 1979 without opinion. A timely petition to transfer to the Supreme Court of Indiana was filed and denied without opinion on January 17, 1980. This petition is filed less than ninety (90) days from the date of the Supreme Court of Indiana's denial of transfer. The jurisdiction of this Court is involved pursuant to 28 U.S.C. § 1257(3).

QUESTIONS PRESENTED

The petitioner was stopped, detained and arrested in a random stop for Indiana motor vehicle violations without the police officer observing any motor vehicle violations and without the police officer observing the petitioner in the commission of any criminal acts. The opinion issued on May 17, 1979 by the Indiana Court of Appeals was rendered in a memorandum decision clearly marked "NOT FOR PUBLICATION".

1. The question presented then is whether the random stop, detention and arrest of petitioner by a police officer acting without an articulable and reasonable suspicion that petitioner's motor

vehicle was being operated in violation of the State of Indiana's motor vehicle rules or regulations or that petitioner was placing others in danger by his driving was a permissable infringement upon petitioner's constitutional guaranteed privacy rights.

2. The question then presented is whether there is a constitutional obligation for State Appellate Courts to publish their written opinions and memorandum decisions under the Constitution of the United States.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the following constitutional provisions:

(1) The First Amendment to the Constitution of the United States, which provides as follows:

> "Congress shall make no law ... abridging the freedom of speech, or of the press ...."

(2) The Fourth Amendment to the Constitution of the United States, which provides as follows:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by oath or affirmation and particularly describing the place to be

searched, and the persons or things to be seized".

(3) The Fifth Amendment to the Constitution of the United States, which provides as follows:

"No person shall ... be deprived of life, liberty or property, without due process of law ...."

(4) The Sixth Amendment to the Constitution of the United States, which provides as follows:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, ... and to be informed of the nature and cause of the accusation ...."

(5) The Fourteenth Amendment to the Constitution of the United States, which provides as follows:

"... No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; or shall any state deprive any person of life, liberty, or property, without due process of law ...."

STATEMENT OF THE FACTS

On January 25, 1977, at approximately 4:25 o'clock P.M., Indiana State Police Officer James Springer (hereinafter referred to as Springer), while on patrol, observed a red pick up truck pulling a trailer and recognized the driver of said pick up truck at the intersection of

Indiana State Road 3 and U.S. 6 in Noble County, Indiana to be the petitioner. Springer had previously stopped petitioner and was personally acquainted with petitioner. Springer in his marked police vehicle made a turn in order to follow petitioner's truck; turned on the red lights of his patrol car; and, motioned for the driver of said truck to pull the vehicle to the side of the roadway. When Springer got out of his patrol vehicle, he met petitioner, who, after parking his truck, was standing on the side of the road by this vehicle. Springer requested to see the operator's license of petitioner at which time petitioner denied being the driver of the pick up truck.

Springer then took petitioner to the patrol car, placed petitioner inside of said vehicle and radioed Springer's District Commander, Lieutenant Edward Anweiller (hereinafter referred to as Anweiller) to meet him at the location where Springer had stopped the truck being driven by petitioner. Petitioner was detained in Springer's police vehicle until Anweiller arrived on the scene some minutes later. Subsequent to Anweiller's arrival after petitioner had been detained in Springer's police vehicle and some minutes after the initial stop, Springer first noticed that the trailer which was attached to said truck possessed no registration license plate, and was improperly coupled to the pick up truck, in violation of IC 9-1-4-1 and IC 9-8-1-5 respectively. In addition to the above charges, petitioner was initially cited for Driving While License Suspended which was subsequently amended to

Operating a Motor Vehicle With No Operator's License.

Springer in justification of his singling out petitioner, following petitioner, motioning for petitioner to pull his vehicle over to the side of the road, stopping petitioner, detaining petitioner, and arresting petitioner was based upon personal knowledge previous to January 25, 1977 he obtained from an unknown individual in Noble County that about a year prior to January 25, 1977, petitioner had been charged with No Operator's License and that a jury in Noble County had suspended petitioner's operator's license and driving privileges in the State of Indiana.

At no time prior to the detention arrest of petitioner did Springer run a check on the operator's license of petitioner, nor did Springer directly observe any motor vehicle violations prior to the detention and arrest of petitioner.

After petitioner's conviction in a trial by jury and timely appeal presented to the Indiana Court of Appeals, the Indiana Court of Appeals rendered a memorandum decision clearly marked "NOT FOR PUBLICATION" on May 17, 1979.

REASONS FOR GRANTING WRIT

1. The Indiana Court of Appeals in prohibiting the publication of its opinion raises issues which not only affect the rights of the petitioner, but raises issues which affects the whole system of American jurisprudence. United States District Judge Frederick van Pelt Bryan

said it best in the case of Garfield v. Palmieri 193 F. Supp. 137, 143 (D. N.Y., 1961):

> "In a system of law based on stare decisis it is not enough that opinions of the court be available only to litigants and their counsel. It is essential that such opinions be readily accessible to the legal profession generally and to the courts for purposes of research, citation and general information as to the state and development of the law, as well as to others who may wish to refer to them. The sound and efficient administration of federal justice requires that such publication in a reporter system of the nature of the Federal Supplement be unfettered. This is in the interest not only of litigants, the legal profession and the courts themselves, but of the public generally".

A similar position was taken by the United States Court of Appeals in the case of Lowenschuss v. West Pub. Co. 542 F.2d 180, 185 (3rd Cir. 1976) in which the Court stated the same policy arguments as in Garfield and added "accordingly, under our system of jurisprudence the judiciary has the duty of publishing and disseminating its opinions".

Admittedly, in the two previously cited cases, the Court was being asked by the defendants in question not to print the opinions. However, the rationale of the Court in arriving at the decision to publish applies equally in the case at hand. In a case similar to that presented

herein, State ex rel. Journal Co. v. County Ct. for Racine Co. (1969) 43 Wis.2d 297, 168 N.W.2d 836, the Court in denying a trial court right to suppress its opinion said:

> "We see no difference between a trial court and a final appellate court in its obligation to reveal its decisions . . . . the courts have been the great repositories of personal liberty, and their obligation is not only to see that the conduct and performance of executive and legislative officials is open to public scrutiny, but to maintain for themselves the high standards that they prescribe for others. It would ill behoove a court of this state to conclude that it had the inherent right to impose its mandates on the parties to an action, but to conceal those mandates from the examination of the public. While we recognize the exemplary purpose behind the trial judge's order herein, we can think of no device more subject to abuse, more conducive to a climate favoring star chamber judgments, and more likely to result in judicial caprice, that a mandate of this court upholding the order impounding this decision".

The Wisconsin Supreme Court stated the issue very well. The case here at issue exemplifies an appellate "star chamber" proceeding so much feared by the Wisconsin Court. The Indiana Court of Appeals not only ignored the binding precedent of the United States Supreme Court, but proceeded to hide that fact

by ordering that the opinion not be published. The United States Court of Appeals for the Tenth Circuit in the case of United States v. Marines, 535 F.2d 552, 555 (10th Cir. 1976) does make the statement that "We are aware of no constitutional right to have an opinion published". However, that case is distinguishable for several reasons. First, it offers no authority in support of its position. Second, the statement is made in reference to a trial court opinion. We do not here argue that there is a right to have state trial court opinions published. In fact, we do not believe that trial court opinions play an important part in the principles of stare decisis so essential to American jurisprudence.

We believe that in refusing to publish this opinion, the Indiana Appellate Court has made it easier for itself to ignore the binding precedent of the United States Supreme Court. But it has thereby enabled itself to deny to the defendant a fair trial and a fair appeal inherent in a fair trial protected by the Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States.

2. The Courts below have failed to follow a Federal question of substance in a manner not in accord with a recent decision of this Court. The question involved is whether the singling out of an individual motor vehicle, the subsequent stopping, detention and arrest of its driver without an articulable and reasonable suspicion that the operator is unlicensed or that the vehicle is not

registered was a permissable infringement upon constitutionally guaranteed rights under the Fourth and Fourteenth Amendments in the light of this Court's holding in Delaware v. Prouse, ____ U.S. ____, 99 S.Ct. ____, 59 L.Ed.2d 660 (1979).

The random stopping of petitioner's vehicle and subsequent detention of petitioner was conducted without an "appropriate factual basis for suspicion nor upon some other substantial and objective standard or rule". Terry v. Ohio, 392 U.S. 1, 22, 20 L.Ed.2d 889, 88 S.Ct. 1868 (1968); Delaware v. Prouse, supra, 59 L.Ed.2d, at 672. Springer observed no moving or equipment violations nor was there cause to believe that petitioner was placing others in danger by his apparently safe driving. Springer's justification for his actions by own admission during the trial in the Noble County Court was that he had arrested petitioner in the past and that without further checking, he had assumed that the jury had suspended petitioner's driving privileges in the State of Indiana based upon third-hand information he had received. Petitioner first raised the impropriety of the stop, detention and arrest in a motion to dismiss at the trial court level.

However, the Indiana Appellate Courts failed to consider such an intrusion upon petitioner's constitutional guaranteed privacy rights in disguising their opinion on appearances in the record below and determing that petitioner waived such error procedurally which is not supported by the Trial Court record.

The Indiana Appellate Court in alleging a procedural error by petitioner in failing to move to dismiss in writing cites Indiana statutes which prevent petitioner from basing his motion on constitutional grounds prior to the commencement of proceedings and during such proceedings in the Trial Court. Petitioner, in fact, orally moved to dismiss the information against him which was summarily denied by the Trial Court without reasons given. Petitioner preserved this issue on appeal in the only manner possible through his Statement of Claimed Errors and other pleadings to the Indiana courts.

However, the invasion of petitioner's privacy by Springer created such "substantial anxiety", Delaware v. Prouse, supra, 59 L.Ed.2d, at 660, that such intrusion violated his "right to personal security free from arbitrary interference by law officers". United States v. Brignoni-Ponce, 422 U.S. 873, 878, 95 S.Ct. 2574, 2579, 45 L.Ed.2d 607 (1975); United States v. Dunbar, 470 F.Supp. 704, 706 (D.Conn. 1979).

In United States v. Montgomery, 561 F.2d 875, 879 (D.C. Cir., 1977) the Court determined that a police officer must possess "specific articulable facts which, taken together with rational inferences from those facts, reasonably warrant suspicion of criminal conduct ....". Accord, United States v. Turner 474 F.Supp. 444 (E.D. Wisc., 1979); Delaware v. Prouse, supra. Petitioner urges this Court to consider that Springer had no articulable or even any indicia of individualized suspicion which would render such a stop and

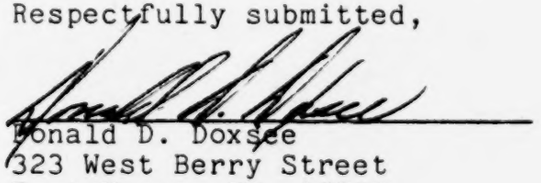
detention justifiable. According to the Second Circuit following this Court's decision in Delaware v. Prouse, supra, the Court held in United States v. Price, 599 F.2d 494, 499 (2nd Cir., 1979) that "where no articulable grounds for individualized suspicion are proffered, no individualized stop is justified".

The concern here is "to safeguard the privacy and security of individuals against arbitrary invasion ...." Marshall v. Barlow's, Inc., 436 U.S. 307, 312, 98 S.Ct. 1816, 56 L.Ed.2d 305, (1978) cited with approval in Delaware v. Prouse, supra 59 L.Ed.2d at 667. By his actions, Springer, as an agent for a governmental entity, violated petitioner's privacy rights. The subsequent detention and arrest of petitioner for vehicular violations under the statutory provisions of the State of Indiana were so crucial and prejudicial to petitioner in direct contravention to the holding of Delaware v. Prouse, supra, that petitioner's convictions on all counts should be reversed.

CONCLUSION

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,



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APPENDIX A.

STATE OF INDIANA
CLERK OF THE SUPREME COURT
AND COURT OF APPEALS
BILLIE R. McCULLOUGH, CLERK
217 STATE HOUSE
INDIANAPOLIS, INDIANA 46204
TELEPHONE 633-5200

NO. 3-378A58

Glenn Anglin V. State of Indiana

You are hereby notified that the Indiana Court of Appeals has on this day issued the enclosed Opinion.

Please acknowledge receipt of this notice in order that our records may show that you have been notified of this action.

WITNESS my name and the seal of said Court, this 17th day of May, 1979.

(SEAL)

/s/ Billie R. McCullough
Clerk Supreme Court and
Court of Appeals

NOT FOR PUBLICATION

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IN THE
COURT OF APPEALS OF INDIANA
THIRD DISTRICT

GLENN ANGLIN, Defendant-Appellant	)	
vs.	)	No. 3-378 A 58
STATE OF INDIANA, Plaintiff-Appellee	)	

APPEAL FROM THE NOBLE-WHITLEY COUNTY COURT, NOBLE COUNTY DIVISION
The Honorable Charles L. Quinn, Judge

GARRARD, P.J.

MEMORANDUM DECISION

Appellant Glenn Anglin was charged by way of information with the offenses of no operator's license, no registration plate on trailer and improper trailer coupling. Before his arraignment, Anglin, electing to proceed pro se, orally moved that the information be dismissed. It is not entirely clear from the record what the grounds for the motion were. However, the objection appears to be that Anglin did not receive notice that the information was filed and/or that the information charged an offense which was not contained in the Uniform Traffic Tickets originally given to Anglin.[1] This motion was denied after hearing and argument. Anglin acted as his own counsel at trial and was convicted of all three counts. The trial court also found him to be in direct contempt of court and sentenced him to 90 days' imprisonment.

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[1] The officer who issued the tickets was under the belief that Anglin was driving while suspended and therefore charged Anglin with that offense. The suspension had lapsed, however, and the charge of no operator's license was substituted in the information.

Anglin's first contention on appeal is that the trial court should have dismissed the information because the probable cause affidavit attached thereto did not contain sufficient information to establish probable cause. We first note that this ground for dismissal is substantially different from the grounds asserted below.[2] The alleged error in denying the motion to dismiss is therefore waived. However, there was no error in denying the motion. The motion to dismiss was not made in writing as required by IC 35-3.1-1-8. Furthermore, the asserted grounds do not fall within the statutory grounds upon which a motion to dismiss may be predicated. IC 35-3.1-1-2; IC 35-3.1-1-4; IC 35-3.1-1-8. See also Hopper v. State (1974), 161 Ind. App. 29, 314 N.E.2d 98.

Anglin next asserts that the trial court erred in granting the state's oral motion in limine and ordering Anglin to refrain from making any statement in his closing argument covering the preliminary charge of driving while suspended. Anglin argues that a motion in limine must be made in writing before or during trial and the state's motion was, therefore, not properly or timely made. It is not necessary for the court to consider the merits of this argument. A trial court is vested with discretion in

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[2] The record does not support appellate counsel's contention that Anglin "intended" to raise this ground but was prevented from adequately doing so by his lack of expertise and inexperience.

its control of final argument and absent a showing of an abuse of discretion, his ruling will not be disturbed. Faust v. State (1977), ____ Ind. ____, 366 N.E.2d 175; Pearish v. State (1976), 264 Ind. 339, 344 N.E.2d 296; Lockridge v. State (1975), 263 Ind. 678, 338 N.E.2d 275. Throughout the trial, Anglin attempted to elicit evidence concerning the preliminary charge. The trial court held several times that such evidence was irrelevant to the offenses charged and was misleading and confusing to the jury as to what offenses had been charged. Under these circumstances, we cannot say that the trial court abused its discretion in limiting the scope of closing argument.

Anglin also contends that the trial court erroneously found him in direct contempt for violating the court's order limiting argument. Anglin argues that he was not a witness so he could not be found to be in contempt under IC 34-4-7-2 and further that the court failed to establish the requisite element of intent.

IC 34-4-7-1 and IC 34-4-7-2 set forth acts which constitute direct contempt. However, it has long been held that the court's inherent power to punish contempt is not limited to the wording of these statutes. See, e.g., McIntire v. State (1967) 248 Ind. 142, 223 N.E.2d 347. A criminal contempt can be any act which manifests disrespect for or a defiance of a court. In Re. Perrello (1973), 260 Ind. 26, 291 N.E.2d 698. Direct contempt deals primarily with maintenance of order and respect in the courtroom. McIntire, supra. Thus,

the wilful disobedience of a court's order can constitute a direct contempt if such disobedience is manifested in the presence and hearing of the court.

Anglin's violations of the court's order are undenied. Anglin began his closing argument by informing the jury that he was not permitted to allude to the preliminary charge of driving while suspended and proceeded to discuss the preliminary charge three additional times during his argument. During the hearing on the contempt charge, which occurred independently after the jury was discharged, Anglin stated that he "had no other choice" but to argue the preliminary charge, although he knew that the court had ordered him not to do so. The question of intent is a question of fact. In Re. Perrello, supra. The course of conduct exhibited by Anglin leads to the inference that he was acting with the wilful intent to disobey the court's order. We find no error in the contempt finding.

Anglin's final allegation of error is that the trial court erred in imposing sentence without the use of a presentence report. He acknowledges that IC 35-8-1A-9 (IC 35-4-1-4-9) requires the use of a presentence report only where a defendant is convicted of a felony. He argues, however, that there is no rational basis for treating a defendant in a felony case different from a defendant in a misdemeanor case. Even if we were to agree, Anglin would still not be entitled to use of a presentence report. IC 35-8-1A-9 (IC 35-4-1-4-9) has been held to be inapplicable to cases tried before a jury where

the jury imposes the punishment. Hawkins v. State (1978), ____ Ind. ____, 378 N.E.2d 819; Colvin v. State (1976), 264 Ind. 514, 346 N.E.2d 737; Pulliam v. State (1976), 264 Ind. 381, 345 N.E.2d 229. In light of the fact that this case was tried before a jury and IC 35-8-2-1 empowers the jury to impose sentence in misdemeanor cases, a defendant tried before a jury and convicted of a misdemeanor is not entitled to a presentence report.

We find no error. Affirmed.

HOFFMAN, J. and STATON, J. Concur.

APPENDIX B.

STATE OF INDIANA
CLERK OF THE SUPREME COURT
AND COURT OF APPEALS
BILLIE R. McCULLOUGH, CLERK
217 STATE HOUSE
INDIANAPOLIS, INDIANA 46204
TELEPHONE 633-5200

NO. 3-378A58

Glenn Anglin V. State of Indiana

You are hereby notified that the Court of Appeals has on this day Denied Appellant's Petition for Rehearing. Buchanan, Jr., C.J.

Please acknowledge receipt of this notice in order that our records may show that you have been notified of this action.

WITNESS my name and the seal of said Court, this 1st day of August, 1979.

(SEAL)

/s/ Billie R. McCullough
Clerk Supreme Court and
Court of Appeals

IN THE
INDIANA COURT OF APPEALS
CAUSE NO. 3-378A 58

GLENN ANGLIN, Appellant-Defendant	)	APPEAL FROM THE NOBLE-WHITLEY COUNTY COURT,
vs.	)	NOBLE COUNTY DIVISION
STATE OF INDIANA, Appellee-Plaintiff	)	THE HONORABLE CHARLES L. QUINN, JUDGE

APPLICATION FOR REHEARING

Comes now the appellant, Glenn Anglin, by counsel, pursuant to Appellate Rule 11, Indiana Rules of Appellate Procedure, and respectfully petitions the Court for a rehearing and reconsideration of the decision of this Court which was rendered on May 17, 1979. In support of his application, the appellant says as follows:

1. The appellant believes the decision of the Court in affirming the denial of the motion to dismiss the information is erroneous in that the Court failed to consider that the police officer's random stop of Anglin's vehicle and the detention of Anglin for a check of Anglin's driver's license without an articulable and reasonable suspicion that Anglin was unlicensed was a substantial infringement of Anglin's right to due process according to Delaware v. Prouse, ____ U.S. ____, 59 L.Ed.2d 660, 99 S.Ct. ____ (1979). For such infringement the

plain or fundamental error principle could have been invoked by this Court in order for the Court to review and agree with Anglin's first contention on appeal that the Trial Court should have dismissed the information because the information failed to establish probable cause for the random stop, detention and arrest of Anglin.

2. That appellant believes that the decision of the Court in affirming Anglin's conviction for direct contempt for violating the Trial Court's order limiting argument is erroneous in that the State had elicited evidence and testimony from its own witness regarding the charge of "Driving While Suspended" prior to the State's oral submission of the "Motion in Limine" prohibiting Anglin from mentioning this charge in closing argument to the jury. The Trial Court abused its discretion limiting statements by Anglin on that very subject which the State presented by testimony first to the jury, and the subsequent conviction of Anglin for direct contempt should be reversed and set aside.

WHEREFORE, the appellant prays that this Court grant his application for rehearing, reconsider the decision rendered by this Court on May 17, 1979, determine that the police officer's actions amounted to a substantial infringment of the appellant's right to due process, determine that the plain or fundamental error principle should be invoked in reviewing this record, determine that the Trial Court erred in granting the State's Motion in Limine, set aside and reverse the appellant's convictions and sentences for

violations as set forth in the information and his conviction and sentence for direct contempt and for all other just and proper relief in the premises.

RAVER, FEDEROFF & LOWENSTEIN

/s/ Solomon L. Lowenstein, Jr.
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Attorney for appellant

APPENDIX C.

STATE OF INDIANA
CLERK OF THE SUPREME COURT
AND COURT OF APPEALS
MARJORIE H. O'LAUGHLIN, CLERK
217 STATE HOUSE
INDIANAPOLIS, INDIANA 46204
TELEPHONE 633-5200

NO. 3-378A58

Glenn Anglin V. State of Indiana

You are hereby notified that the Supreme Court has on this day denied Appellant's "Petition to Transfer". Givan, C. J. All Justices Concur.

Please acknowledge receipt of this notice in order that our records may show that you have been notified of this action.

WITNESS my name and the seal of said Court, this 7th day of January, 1980.

(SEAL)

/s/ Marjorie H. O'Laughlin
Clerk Supreme Court and
Court of Appeals

IN THE
INDIANA SUPREME COURT
CAUSE NO. 3-378A58

GLENN ANGLIN, Appellant-Defendant	)	APPEAL FROM THE NOBLE-WHITLEY COUNTY COURT,
vs.	)	NOBLE COUNTY DIVISION
STATE OF INDIANA, Appellee-Plaintiff	)	THE HONORABLE CHARLES L. QUINN, JUDGE

PETITION TO TRANSFER

Comes now the appellant, Glenn Anglin (hereinafter referred to as Anglin), by counsel, pursuant to Appellant Rule 11, Indiana Rules of Appellate Procedure, and respectfully petitions the Supreme Court to transfer said cause to the Supreme Court for review. In support of his petition, Anglin says as follows:

1. That the Indiana Court of Appeals decided this cause with a Memorandum Decision on May 17, 1979 in Cause No. 3-378A 58.

2. That the Memorandum Decision of the Indiana Court of Appeals in this cause affirmed the conviction and judgment of the Trial Court against Anglin.

3. That Anglin filed an Application for Rehearing with the Indiana Court of Appeals on June 6, 1979 within twenty (20) days from the date of the Memorandum

Decision of the Indiana Court of Appeals and that the Indiana Court of Appeals denied Anglin's Petition for Rehearing on August 1, 1979.

4. That the Memorandum Decision of the Indiana Court of Appeals is in error in that said Memorandum Decision contravenes a ruling precedent of the United States Supreme Court in the case of Delaware v. Prouse, ____ U.S. ____, 99 S.Ct. ____, 59 L.Ed.2d 660 (1979) which held that a law enforcement office cannot single out an individual vehicle, stop such vehicle and detain the driver in order to check the operator's license of the driver and/or the registration of the vehicle unless there exists articulable and reasonable suspicion that the operator is unlicensed or that the vehicle is not registered. The Prouse Court determined that such a random stopping of a motor vehicle constituted an unreasonable search and seizure pursuant to the Fourth and Fourteenth Amendments of the United States Constitution, and as such the random stop was violative of an individual's right of due process.

5. That the Memorandum Decision of the Indiana Court of Appeals is in error in that the Memorandum Decision in this cause sanctioning the random stopping of Anglin by a police officer without probable cause is in conflict with the prior opinion of the Court of Appeals in Irwin v. State (1979) ____ Ind.App. ____, 383 N.E.2d 1086 which case held that the action of a police officer in stopping a motor vehicle amounts to a detention of its driver and in a tehcnical sense constitutes an arrest and as such the officer

must possess specific and articulable facts which would warrant an intrusion upon an individual's right of privacy.

WHEREFORE, Anglin prays that this Court grant his Petition To Transfer, vacate the Memorandum Decision of the Court of Appeals in this cause and for all other just and proper relief in the premises.

Respectfully submitted,

RAVER, FEDEROFF & LOWENSTEIN

BY:/s/Solomon L. Lowenstein, Jr.

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Attorney for appellant

APPENDIX D.

IN THE NOBLE-WHITLEY COUNTY COURT
NOBLE COUNTY DIVISION
CRIMINAL DOCKET

BOND $750.00
DATE POSTED 1/25/77
SURETY Allied Fidelity Ins. Co.
AGENT Robert F. Kropp
BOND NUMBER B522 751

STATE OF INDIANA
VS.
GLENN ANGLIN

CHARGE
COUNT I Driving While License is suspended
COUNT II Improper Trailer Coupling
STATUTE IC 1971
COUNT III No Registration Plat on Trailer

COURT'S MINUTES Officer: J.D. Springer

The Court now accepts the verdict in the presence of the Prosecuting Attorney and the Defendant and the jury. At the request of the Defendant, the jury is now polled and each juror states that the verdict returned and read is his or her individual verdict. The Court now enters judgment upon the verdict.

1. That the Defendant is found guilty of Count I, No Operator's License, and that he be fined $500.00 and be imprisoned at the Indiana State Farm for 6 months.

2. That the Defendant is guilty of Count II, Improper Trailer Coupling, and that he be fined $250.00.

3. That the Defendant is guilty of Count III, No Registration Plat on Trailer, and that he be fined $250.00.

4. That the Defendant herein pay the costs of this action including the costs of the jury trial.

The jury is now excused.

The Defendant is now charged in open Court in the presence of the Prosecuting Attorney and the Defendant of a direct contempt of the Court in violation of Indiana law of disrupting the courtroom by 4 times disobeyeing the order of the Court not to make reference to a driving while suspended license during this closing arguments to the jury. The Defendant admits that he argued the point before the jury. The Court now finds that the Defendant is in contempt of Court and for his contempt, he shall be incarcerated at the Indiana State Farm for a period of 90 days to be served concurrently with the jail sentence rendered herein on Count I, No Operator's License.

Dated July 27, 1977.

/s/ Charles L. Quinn
Charles L. Quinn
Special Judge

STATE OF INDIANA)
)SS:
NOBLE COUNTY)

IN THE NOBLE COUNTY COURT
CAUSE NO. NC-CR-77-2479

STATE OF INDIANA,
Plaintiff

vs.

GLENN ANGLIN,
Defendant

MOTION TO CORRECT ERRORS

STATEMENT OF CLAIMED ERRORS

The Defendant, Glenn Anglin, requests the Court to enter an order for the correction of errors occurring prior to the filing of this motion for the following reasons:

1. The Court erred in imposing its sentence upon the Defendant, which sentence included incarceration and large fines, without the use of a Pre-Sentence Report.

2. The Court erred in granting the State of Indiana's oral Motion In Limine which precluded the Defendant from making any statements concerning a Uniform Traffic Ticket of Driving While Suspended during his closing argument. Said Indiana Uniform Traffic Ticket with the charge of Driving While a License is Suspended was issued to the Defendant as the charge which initiated this particular cause of action.

3. The Court erred as a matter of law when it overruled the Defendant's

Motion to Strike (Dismiss) the information when, on the face of the Affidavit for Probable Cause, said Affidavit did not contain sufficient information to establish probable cause for the arrest of the Defendant.

4. The Court erred in finding the Defendant to be in contempt of court.

5. The Court erred in not advising the Defendant of his right to counsel during the contempt proceedings inasmuch as said proceedings were not a part or parcel of the criminal trial and the record does not indicate that the Defendant waived his right to counsel during the contempt proceedings.

6. The penalty imposed on the Defendant by the Court for contempt is excessive and contrary to the evidence.

STATEMENT OF FACTS

On January 25, 1977 at approximately 4:25 o'clock p.m., Trooper James Springer of the Indiana State Police observed a Red 1960 International Pick-Up Truck at the intersection of Indiana State Road 3 and U.S. 6. Officer Springer alleged in the Affidavit for Probable Cause filed in this action that he recognized the driver of the International Pick-Up Truck to be the Defendant, Glenn Anglin, whom he knew from having previously arrested him. Officer Springer's testimony at the trial of this cause of action concurred with the statements he made in his Affidavit for Probable Cause. Officer Springer, who was then and there driving an Indiana State Police vehicle and in

uniform curbed the Defendant's automobile on State Road 3. Officer Springer requested that the Defendant produce his driver's license which the Defendant was unable to produce. Ultimately, James Springer issued Uniform Traffic Ticket and Complaint Citations to the Defendant for "Driving While License Suspended", "No Registration Plate on Trailer", and "Improper Trailer Coupling".

On February 11, 1977 the State of Indiana filed an Information in three counts against the Defendant, Glenn Anglin, charging him with "No Operator's License", "No Registration Plat on Trailer", and "Improper Trailer Coupling". The Defendant appeared for arraignment on June 1, 1977 and entered please of Not Guilty to all the charges contained in the aforementioned Information. The Defendant represented to the Court on June 1, 1977 that he would waive his right to be represented by counsel at any stage of the proceedings.

On July 27, 1977, the Defendant appeared pro se for a jury trial in this cause of action. Ultimately, after testimony, the Defendant was found guilty of all three counts to the Information. Subsequent to the jury being excused in this case the Defendant was charged in open court with Contempt of Court. The court proceeded to find the Defendant in Contempt of Court and sentenced him to a period of incarceration at the Indiana State Farm.

The Defendant, Glenn Anglin, now remains free on Appeal Bond pending the ultimate disposition of this case.

LAW

In the case at bar, the jury returned verdicts of guilty to all three counts alleged in the Information and further set punishment in the form of fine and imprisonment. The court records indicate that immediately after the return of the jury's verdict the Court entered judgment upon the verdict and imposed the fines and sentences recommended by the jury. In citing I.C. 1971, 35-7-1-1, the Indiana Court of Appeals stated in Grzesiowski vs. State, (1976), 344 N.E.2nd 305:

> "The ultimate sentence received by a Defendant does not rest with the jury in trials by jury. The trial court must review and consider the pre-sentence report prior to sentencing and committment. The trial court, in its discretion, may, after considering the pre-sentence report, suspend any sentence or penalty fixed by a jury, or place the Defendant on probation." Grzesiowski, supra, at 316.

The Defendant in the Grzesiowski Case appealed from a felony conviction. It is well established in the State of Indiana that a pre-committment investigation report is a requirement prior to sentencing when a Defendant has been convicted of a felony. See: I.C. 1971, 35-8-1a-9: Roman vs. State, (1976) 354 N.E.2nd 205; Glenn vs. State (1975) 322 N.E.2nd 106 and Grzesiowski vs. State, supra.

The Courts in Indiana are empowered to suspend execution of a sentence for a Defendant convicted of a felony if the Court finds that incarceration is not necessary for a particular Defendant. The Court is required to review the individual character and life of a Defendant through the use of a Pre-Sentence Investigation. If the Court makes a determination that a person so convicted should not suffer the penalty imposed by the law the Court may, if the interest of society demands such, institute its own sentencing. The Courts in the State of Indiana are given authority to follow a discretionary procedure with respect to sentencing by I.C. 1971, 35-7-1-1. The power to suspend a sentence and place a Defendant on probation afforded Indiana Courts through I.C. 1971, 35-7-1-1 is applicable to Circuit and Criminal Courts and City and Municipal Courts in cases of both felonies and misdemeanors.

The Court in the case at bar contrary to the spirit of the aforementioned Indiana Statutes sentenced the Defendant without first reviewing a Pre-Sentence Report. The Court in the case at issue made no attempt to discern whether or not the sentence recommended by the jury was warranted in reference to the Defendant, Glenn Anglin.

The Court records indicate that after evidence was concluded in this case, the State of Indiana made an oral Motion in Limine to preclude the Defendant from making any statements concerning a Uniform Traffic Ticket of Driving While Suspended. The Court granted the State's Motion in Limine. The purpose of a "Motion in

Limine" is to exclude prejudicial matter and not to exclude irrelevant evidence. Baldwin vs. Inter City Contractors Service, Inc., (1973) 297 N.E.2nd 831. The Prosecutor, through its Motion in Limine sought to keep out of evidence the initial charge received by the Defendant of Driving While License Was Suspended. The actions and conduct of the arresting officer, James Springer, in making the arrest of the Defendant, was material to the case. In granting the State's Motion in Limine, the Court ordered the Defendant to refraim from mentioning a substantially relevant matter. This particular matter would not have been prejudicial to the State at the case at bar.

In Burrus vs. Silhavy (1973) 293 N.E.2d 94, the Indiana Court of Appeals stated that a "Motion in Limine is a term used to describe a written motion which is usually made before or after beginning of a jury trial for a protective order against prejudicial questions and statements; its effect has been to shorten trial, simplify issues, and reduce possibilities of mis-trial." In our present case the Court erred in allowing the Prosecutor to make an oral Motion in Limine which, on the face of the record, was not timely and procedurely improper.

On June 1, 1977 the Defendant was arraigned on the original charges filed against him in this cause of action. Prior to entering a plea to the Information in Three Counts, the Defendant moved the Court to strike the Information. The Defendant's Motion to Strike, prior to entering a plea, could have been treated as a Motion to Dismiss. In the alternative, it may have been the intention of

the Defendant to strike the Affidavit for Probable Cause attached to the Information which would have been a timely and substantially accurate motion. The record does not indicate how the Court actually treated the Defendant's Motion to Strike. The Defendant, a layman, untrained in the procedures and nuances of the law, recognized a defect in the Information. Although the Defendant was unable to use a legal analysis in articulating same, he did note that he believed his initial arrest by Officer Springer to be "harrassment".

Officer Springer, in his Affidavit for Probable Cause did not indicate that he had probable cause to curb the Defendant. In fact, Officer Springer stated, "I know Mr. Anglin because I have arrested him in the past and have been through a jury trial with him." There is no mention in the Affidavit for Probable Cause that James Springer witnessed the Defendant committing any crime. A police officer who observes a motorist committing a violation of a traffic regulation which constitutes a misdemeanor, has probable cause to stop a motorist and arrest him. E.g., Brooks v. State (1967) 231 N.E.2nd 816; Williams v. State (1966) 222 N.E.2nd 397; Lander v. State (1958) 154 N.E.2nd 507. It is well settled in the State of Indiana that mere suspicion that a crime has been or is being committed does not constitute probable cause for a police officer to make an arrest. Suter v. State (1949) 88 N.E.2nd 386; Edwards v. State (1926) 152 N.E.2nd 21. Officer Springer stated under oath that he had probable cause to stop the Defendant since he had a prior contact with the

Defendant and was aware of his reputation. However, a person's reputation as known to a police officer does not constitute probable cause for an arrest in the State of Indiana. Robinson v. State (1925) 149 N.E. 891. The Indiana Supreme Court was dispositive of the probable cause issue when it held:

> "Probable cause justifying an arrest without a warrant exists where facts and circumstances within the arresting officers knowledge or of which he had reasonably trustworthy information, would lead a reasonably prudent person under the conditions at the time to believe a crime had been committed." Manson v. State (1967) 229 N.E.2nd 801, 803.

Officer Springer's conduct in arresting the Defendant was clearly "harrassment" as the Defendant had raised in his Motion to Strike, and therefore the Court erred in overruling the Defendant's motion.

Immediately after the jury was excused in the case at bar the Court charged the Defendant with "Contempt of Court". It is explicit in the trial record that the Court ordered the Defendant not to discuss or make reference to an Indiana Uniform Traffic Citation charging him with Driving on a Suspended License. The Defendant admitted that he made mention of this charge during his closing argument to the jury. However, prior to finding a Defendant in direct Contempt of Court, the Court must ascertain whether or not the Defendant's actions are contemptous and whether or not a

Defendant intentionally violated the Court's order. "Direct contempt deals primarily with the maintenance of order and respect in the court room, and to such areas adjacent thereto as are necessary for control for such purposes." McIntire v. State (1967) 223 N.E.2nd 347. Case law gives the Courts a plethora of definitions with respect to the word contempt. Contempt of Court has been described as any conduct that, in law, constitutes an offense against the authority and dignity of the Court or of a judicial officer. Contempt has also been defined to mean action and conduct which tends to bring the authority and administration of the law into disrespect and which prejudices parties or their witnesses during litigation. The actions of the Defendant, Glenn Anglin, in the trial of this cause of action, although improper, were not actions which constituted contemptous conduct. E.g. McIntire v. State, supra; LaGrange v. State, (1958) 153 N.E.2nd 593; Grimm v. State (1959) 162 N.E.2nd 454.

The trial court, in finding the Defendant to be in Contempt of Court, failed to establish the requisite element of intent on the part of the Defendant. In a criminal contempt proceeding in the State of Indiana a trial court must establish that a particular Defendant intended to be contemptous. LaGrange v. State, supra and Duemling v. Fort Wayne Community Concerts, Inc., (1963) 188 N.E.2d 274.

A charge of criminal contempt is independent of the action from which it arose. Matter of May, (1976) 358 N.E.2nd 138. A proceeding for contempt is

generally considered to be independent and ancilliary to the main case before the Court. Accordingly, subsequent to the Court charging Glenn Anglin, the Defendant herein with Contempt, the Court was required to inform Mr. Anglin of his right to counsel. Due process of law must be observed by trial courts in contempt proceedings. However, due process was not afforded to the Defendant in the case at bar inasmuch as the Court proceeded with the sentencing in contempt without informing the Defendant of his right to counsel during the proceedings.

Trial courts have inherent power in the State of Indiana to impose a penalty for contempt which penalty can include incarceration. The Defendant herein was sentenced to ninety (90) days on the Indiana State Farm for being in Contempt of Court. In all jurisdictions it has been a long established principal that a penalty for contempt must be commensurate with the degree of a particular Defendant's conduct. "It is of the utmost importance in a free society that the power to punish for contempt be not misused as in cases when it is utilized to protect the personal or individual feelings of a Judge." Grimm v. State (1959) 162 N.E.2nd 454, 456. The sentence imposed upon the Defendant for the finding that he was in Contempt of Court is not sustained by sufficient evidence to conclude that said sentence was reasonable.

For all of the foregoing reasons, it is respectfully requested that the Court alter its judgment of July 27, 1977 by the correction of errors hereby propounded

by the Defendant and by giving the Defendant a new trial in this cause of action.

Respectfully submitted,

/s/Sanford M. Brook

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Attorney for Defendant

CERTIFICATE OF SERVICE

The undersigned does hereby certify that he caused a true and accurate copy of the foregoing Motion to Correct Errors to be served upon:

G. David Lauer
Prosecuting Attorney
33rd Indiana Judicial Circuit
Court House
Albion, Indiana 46701

by depositing the same in the United States Mails, postage pre-paid this 22nd day of September, 1977.

/s/Sanford M. Brook
Sanford M. Brook

Supreme Court, U. S.
FILED
MAY 15 1980
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

January Term, 1980

NO. 79-1616

GLENN ANGLIN,

Petitioner,

v.

STATE OF INDIANA,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF INDIANA.

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Respondent, the State of Indiana, respectfully prays this Court to deny the issuance of a writ of certiorari directed to the Supreme Court of Indiana, thereby refusing to review the decision entered by the Indiana Court of Appeals in Cause No. 3-378 A 58 on May 17, 1979.

OPINION BELOW

The Indiana Court of Appeals for the Third District entered a memorandum decision in this cause (not for publication) on May 17, 1979. This decision may be found in Petitioner's Appendix A. Rehearing was denied by the Indiana Court of Appeals on August 1, 1979, and transfer

was denied by the Indiana Supreme Court on January 7, 1980.

STATEMENT OF THE CASE

On February 11, 1977, the Petitioner was charged by way of Information, with the charges of No Operator's License, No Registration Plate on Trailer, and Improper Trailer Coupling. The Petitioner was granted a change of judge. On June 1, 1977, the Petitioner waived representation by counsel, moved that the information be stricken (which motion was denied), and pled not guilty to the charges. The Petitioner was tried by jury on July 27, 1977, was found to be guilty as charged and was sentenced to be fined $500 and incarcerated for six (6) months on count I, and fined $250 on each of counts II and III. The Petitioner was also found to be in direct contempt of court, and was sentenced to be incarcerated for ninety (90) days. The Petitioner filed his motion to correct errors on September 23, 1978 which motion was denied on January 11, 1978.

Petitioner appealed his conviction to the Indiana Court of Appeals for the Third District which court, on May 17, 1979 in a memorandum decision marked "Not for Publication", affirmed the conviction.

Thereafter, Petitioner filed his Application for Rehearing with the Indiana Court of Appeals which was denied on August 1, 1979. Thereupon, Petitioner filed a Petition to Transfer to the Indiana Supreme Court, which petition was denied on January 7, 1980.

The instant Petition for Writ of Certiorari followed.

STATEMENT OF THE FACTS

On the afternoon of January 25, 1977, an Indiana State Police Officer observed a motor vehicle being operated by Petitioner near a highway intersection in northeast Indiana.

The officer was acquainted with Petitioner and knew that Petitioner, when stopped on a previous occasion, had no driver's license because it had been suspended. He thereupon ran a radio check and was advised that records showed no current driver's license in the name of Petitioner. Further investigation showed that the previous driver's license held by Petitioner had expired in January of 1976 and that Petitioner obtained a new license, after the stopping, in February of 1977.

At the time of stopping, the officer observed that the trailer which was being pulled by Appellant's truck, had no license and was not properly attached to the truck.

REASONS FOR DISALLOWANCE OF THE WRIT

A. Independent State Ground

Petitioner asserts the jurisdiction of this Court pursuant to 28 U.S.C. § 1257(3). Respondent contends that this Court is without jurisdiction over this cause as the opinion of the Indiana court of Appeals was based upon an adequate independent foundation of state substantive law and not necessarily upon the consideration of a federal question.

While Petitioner contends that a federal question is here involved under *Delaware v. Prouse,* — U.S. —, 99 S. Ct. —, 59 L. Ed. 2d 660 (1979), no federal argument or authority was presented to the trial court or to the Indiana Court of Appeals in the original appeal. It was not until after the memorandum decision was rendered on May 17, 1979, that this new federal issue was presented in an application for rehearing.

The alleged federal issue, thereafter presented to the Indiana Supreme Court in a petition to transfer, had neither been before the trial court or the Court of Appeals. Because the issue was not presented or specifically ruled upon at state level, it is not properly before this Court.

Indiana Rules of Criminal Procedure, Rule 16, and Indiana Rules of Trial Procedure, Rule 59, require that alleged errors first be raised in a motion to correct errors in the trial court. Failure to adhere to these rules results in the waiver of the alleged error for purposes of appellate court review. *Murphy v. State,* 267 Ind. 184, 369 N.E.2d 411, 413 (1977). In addition, Indiana law requires that a party object to alleged errors in a timely and specific manner at trial. *Ballard v. State,* 262 Ind. 482, 318 N.E.2d 798, 807 (1974); *Gutierrez v. State,* — Ind. —, 395 N.E.2d 218, 222 (1979).

Petitioner's failure to adhere to the relevant Indiana procedural requirements regarding the raising of issues for appellate review was, alone, a sufficient ground for the Indiana Court of Appeals to deny Petitioner's claim of error. Therefore, a sufficient state ground exists, independent of any federal question, to sustain Petitioner's conviction. *See, Parker v. North Carolina,* 397 U.S. 790, 798 (1970); *Wainwright v. Sykes,* 433 U.S. 72 (1977). Thus, this petition should be denied.

B. Cases Distinguishable

Even if a federal question were at issue here, the *Prouse* decision is not applicable to the facts in the case.

Prouse involved the random stopping and spot checking of driver's licenses and registration without probable cause to believe that any offense had been or was being committed.

In the instant case, the stopping officer knew Petitioner and knew that his driver's license had been suspended. Since driving with license suspended is a misdemeanor in Indiana, the stopping officer had good, proper and probable cause to believe that an offense was in progress. This

stopping was not spot-checking as was the case in *Prouse,* but was rather a stopping under one of the conditions specifically permitted in *Prouse.*

C. Memorandum Decisions Are Public Record

Appellate Rule 15 adopted by the Indiana Supreme Court relates to opinions of the Indiana Court of Appeals and reads in part as follows:

APPELLATE RULE 15

Opinions, Memorandum Decisions, Powers and Conduct of Court on Appeal; Miscellaneous Provisions

(A) Publication and Precedential Value of Dispositions By Court of Appeals.

(1) The Court of Appeals may dispose of an appeal either by written opinion or by written memorandum decision.

(2) Disposition by written opinion shall be made if such disposition:

(a) Establishes, alters, modifies or clarifies a rule of law, or

(b) Criticizes existing law, or

(c) Involves a legal or factual issue of unique interest or substantial public importance.

Provided, however, dissent from a memorandum decision may be expressed by written opinion. Such dissenting opinion may be designated "For Publication" if the dissenting judge determines that the standard for written opinion is satisfied.

Disposition of appeals shall otherwise be by memorandum decision.

(3) Unless specifically designated "For Publication", memorandum decisions shall not be published nor shall they be regarded as precedent nor cited before any court except for the purpose of establish-

> ing the defense of res judicata, collateral estoppel or the law of the case.

The memorandum decision in the instant case was not unique because such decisions, likewise marked "Not for Publication", constantly flow from the very efficient Indiana Court of Appeals.

Such decisions are not suppressed or unpublished. They are simply not printed and bound in book form. They are a part of the public record and are readily available for examination in the office of the Clerk of the Indiana Supreme Court and Court of Appeals. Other appellate level Courts have adopted similar procedures. See: U.S. Court of Appeals (7th Cir), Rule 35.

The fact that this memorandum decision was not printed and made a part of the bound volumes commonly referred to as Ind. App. or Northeastern Second in no way denied Appellant his right to a fair trial.

The Indiana Code does not require memorandum decisions to be printed and bound in book form, for at I.C. 35-1-47-12, we find the following language:

> "All opinions of the Supreme Court or the Appellate Court (Court of Appeals) in criminal prosecutions must be given in writing and recorded in the order-book."

The instant memorandum decision was so given in writing and so recorded in the order-book. It complied with the statute.

D. Issue Not Presented To State Courts

It is not at all uncommon in Indiana for an Appellant who feels that a memorandum decision in his case should be printed in bound book form to file a motion requesting

the Indiana Court of Appeals to do so. When this is done, the Court either grants the motion or denies it.

Petitioner in this case fails to show the filing of such a motion or any opportunity for a ruling on this question by the Court of Appeals. Further, Petitioner failed to raise this issue in his Petition for Transfer to the Supreme Court of Indiana.

The United States Supreme Court should not pass upon the constitutionality of a state appellate rule which has never been challenged in the state courts. *Buck v. California,* 343 U.S. 99 (1952). Compare: *Adler v. Board of Education,* 342 U.S. 485 (1952); *Beck v. Washington,* 369 U.S. 541, reh. den. 370 U.S. 965 (1961).

CONCLUSION

WHEREFORE, Respondent respectfully submits that the issues alleged by Petitioner have been adequately disposed of pursuant to State law grounds, that the issues alleged by Petitioner do not raise a substantial federal question, and that the errors alleged by Petitioner have not prejudiced the substantial rights of Petitioner. Respondent, therefore, respectfully requests that the Petition for Writ of Certiorari be denied.

Respectfully submitted,

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